

REPORT OF INVESTIGATION



File Number:	03-109
Agency:	Georgia Department of Human Resources
Basis for Investigation:	Whistleblower complaint
Allegations:	Ethics Violation/Conflict of Interest
Date Opened:	May 19, 2003
Investigated By:	Deborah Copeland Deputy Inspector General
Date of Report:	November 24, 2003

OFFICE OF THE INSPECTOR GENERAL

File Number: 03-109

EXECUTIVE SUMMARY

The Office of the Inspector General (OIG) received a complaint from a whistleblower alleging an ethics violation and/or conflict of interest on the part of a state employee within Public Health District II of the Georgia Department of Human Resources (DHR).

Specifically, the complainant alleged that a superior was on a gambling trip with both a builder and developer from the community who routinely submit work plans and/or proposals to the superior at the Health Department for approval.

The OIG referred the complaint, without identifying the whistleblower, to DHR for an internal investigation. The DHR reviewed the specifics of this complaint and determined that the employee's actions were not consistent with DHR policies regarding the Governor's Executive Order of January 13, 2003, establishing a Code of Ethics for Executive Branch Officers and Employees. However, it was noted that this particular employee did not actually work directly for the DHR but rather was employed by a county board of health. This work relationship, in effect, results in a "contractual" type of relationship between employees of a county board of health and the DHR as an Executive Branch agency. The DHR took internal steps to disseminate information relating to the Ethics Order to their employees as well as employees within the Public Health Districts. Subsequently, the District Health Director directed the respective employee cited in this complaint to recuse himself from any future work submitted by the builder and developer in this case.

In view of the foregoing, the OIG recommends that the heads of all State agencies make available all copy of the Governor's Order on Ethics dated January 13, 2003, to all employees and any entities doing business with the state on a regular basis.



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File No. 03- 109

TABLE OF CONTENTS

1) Basis for Investigation.....	1
2) Narrative.....	1-3
3) Conclusion.....	3
4) Referrals.....	3
5) Recommendations.....	3

OFFICE OF THE STATE INSPECTOR GENERAL

FILE 03-109

DEPARTMENT OF HUMAN RESOURCES

ETHICS VIOLATION

SUMMARY OF ACTIONS

- 1) **Basis for Investigation** - The Office of the Inspector General (OIG) received a whistleblower complaint alleging an ethics violation and/or conflict of interest on the part of a state employee within the Public Health District II of the Georgia Department of Human Resources (DHR). Specifically, the complainant alleged that a superior was on a gambling trip with both a builder and developer from the community who routinely submit work plans and/or proposals to the superior at the Health Department for approval.
- 2) **Narrative** - On May 27, 2003, the OIG referred the complaint, without identifying the whistleblower, to DHR Commissioner Jim Martin, requesting that DHR look into the matter. It was requested that they determine if the employee's actions were consistent with DHR policies regarding the Executive Order of January 13, 2003, which established a Code of Ethics for Executive Branch Officers and Employees. The OIG asked that a summary of DHR's findings be provided for subsequent review.

On June 27, 2003, the complainant telephoned the OIG's office to report that he had been issued a two day suspension and that he had been receiving "undue pressure" from his superiors which he perceived as retaliatory relating to his having made a complaint to the OIG. Subsequently, on June 30, 2003, the complainant telephoned the OIG's office to report termination of his employment from the Union County Health Department effective this date. Again, the complainant indicated he perceived the termination as retaliatory in nature. Consequently, on June 30, 2003, telephonic contact was made with the State Attorney General's (AG's) office regarding clarification about the complainant's concerns about alleged retaliatory actions on the part of the employer, and any recourse or appeal rights. The AG's office advised that the complainant could seek independent legal counsel and also address the situation with the Georgia Merit system for information relating to appeal procedures as available. The OIG then requested a follow-up meeting with DHR management officials to ascertain their findings. The complainant again telephoned the OIG, indicating

he had retained legal counsel concerning his termination.

On July 29, 2003, the OIG met with DHR Commissioner Martin, his Human Resources Director, Gary Nagel, and staff investigators from DHR's Office of Investigative Services. At the onset of the meeting, Commissioner Martin asked Director Nagel to explain OCGA statute 31-3-11 which outlines the following: Employees of a county board of health are under the supervision of the district director of environmental health, although the hiring and termination from employment of such employee shall be subject to the director of that county board of health. Mr. Nagel continued to explain that the subject of the allegation worked for the Union County Health Department under the GA Division of Public Health, District 2, and that he therefore, was not directly employed by the GA DHR. However, because of the "contractual type" relationship between the District Health Department and the DHR, an investigation was in fact conducted by DHR.

DHR Investigator Dawn Braxton then provided her investigative findings which revealed that the subject employee's conduct did lend itself to the appearance of a conflict of interest and ethical impropriety in that the subject employee's job is to approve or deny lot plans submitted to the County Health Department. Due to the employee's relationship with the both the builder and developer, a reasonable person may conclude that a conflict of interest could occur based on the subject employee's position. As stated in the Executive Order, Section 3, paragraph #1, "An appearance of conflict occurs when a reasonable person would conclude from the circumstances the employee's ability to protect the public interest, or perform public duties, is compromised by personal interest. An appearance of conflict could exist even in the absence of a true conflict of interest." Prior to the meeting's conclusion, the IG addressed the fact the our office had become aware of the complainant's employment termination and the perception was that the termination was retaliatory in nature. Commissioner Martin indicated he would have staff look into the circumstances and report his findings to the OIG.

Subsequent to the meeting referenced above, the DHR took internal steps to disseminate information relating to the Governor's Order on Ethics to their employees within the Public Health Districts across the state. Consequently, the District Health Director for DHR Health District 2 ordered the respective employee cited in this complaint to recuse himself from any future work submitted by the builder and developer referenced in this complaint.

Additionally, in response to OIG request, DHR's Human Resources Director Gary Nagel provided documentation relating to the subject complainant's work history and termination from the County Health Department. Mr. Nagel stated that the records indicate there were fairly significant problems with this particular employee prior to the filing of the OIG complaint, including a couple of coaching memorandums, a suspension without pay in May 2000, and an unmet

performance evaluation.

- 3) **Conclusion** - As previously noted in Section II of this summary, the District Health Director for DHR Health District 2 ordered the respective employee cited in this complaint to recuse himself from any future work submitted by the referenced builder and developer to preclude future conflicts of interest or appearances of ethical improprieties.

On August 22, 2003, after reviewing the aforementioned documentation in entirety, OIG staff contacted Director Nagel to ask if he, as Human Resources Director, is satisfied that the complainant's termination was not retaliatory. He stated that he is satisfied that the District Health Manager took no retaliatory action and after reading the complainant's work history he believes the termination was in fact justified. Mr. Nagel reiterated that because DHR is not the direct employer of employees of a County Health Department, they are not directly involved in the personnel actions. However, he stated that because DHR has a continuing "contractual" relationship with the Health Departments, that DHR can positively influence the Division Directors to help disseminate information relating to compliance of the Governor's Executive Order on Ethics for State Employees. In view of the foregoing, communication efforts were subsequently expended by DHR's Division Directors to reiterate contents of said Executive Order in an attempt to reinforce the concept.

- 4) **Referrals** - There are no referrals relating to this complaint.
- 5) **Recommendations** - Based on our findings, we recommend that the heads of all State agencies make a copy of the Governor's Order on Ethics dated January 13, 2003, available to all employees. Periodic reminders to employees should serve to reinforce the spirit of the order and to ensure that State government functions in a manner consistent with the highest ethical standards.